



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2003

Mr. Bill Hill
Criminal District Attorney
County of Dallas
133 North Industrial Blvd., LB-19
Dallas, Texas 75207-4399

OR2003-8935

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192577.

The Dallas County District Attorney's Office (the "district attorney") received a request for (1) the names of grand jurors who were on a grand jury panel that no-billed four named police officers involved in a specified shooting, (2) the identity of the court that empaneled the jurors and the date on which the jurors were empaneled, and (3) any documents related to the grand jury and particular case noted above. You state that you have released information responsive to the second item of the request. You claim that a portion of the remaining requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that this information, as well as the remaining requested information responsive to the first and third items is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You first contend that the requested grand juror names are confidential under article 20.02 of the Code of Criminal Procedure. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Article 20.02 of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." You assert that federal courts have interpreted Rule 6(e) of the

¹We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Federal Rules of Criminal Procedure, which prohibits public disclosure of matters occurring before the grand jury, to encompasses the identities of jurors, and argue that releasing to the public a list of names of grand jurors assigned to hear a particular case would reveal the "proceedings of the grand jury" in violation of article 20.02. You rely on *In re Sealed Case no. 99-3091*, 192 F.3d 995 (D.C. Cir. 1999) (per curiam) to support your arguments. We note, however, that the language of Rule 6(e) of the Federal Rules of Criminal Procedure is different from the language of article 20.02 of the Code of Criminal Procedure, and further find that *In re Sealed Case* does not directly address the issue of disclosure of grand jurors' names. Therefore, after carefully reviewing your arguments, we decline to extend the definition of "proceedings of a grand jury" to include the names of grand jurors. We do not believe such names reveal the *proceedings* of the grand jury and therefore conclude the names are not confidential pursuant to article 20.02 of the Code of Criminal Procedure.

Next, you argue that the names of grand jurors are confidential under article 19.42 of the Code of Criminal Procedure, which provides as follows:

(a) Except as provided by Subsection (b), information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror, including the person's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, court personnel, or prosecuting attorney.

(b) On a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

Article 19.42 makes confidential certain "personal information" pertaining to individuals who served grand juries, effective September 1, 1999. This provision does not, however, make confidential the names of such individuals. *See* Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential); *see also* Open Records Decision No. 433 (1986) ("As a practical matter . . . the names of the impaneled grand jurors will already have been publicly divulged, since the impaneling will have taken place in open court.") Accordingly, we conclude that you must release the requested names of grand jurors to the requestor.

We now turn to your arguments for the remaining submitted information. You argue that the documents submitted as Exhibit E-1 are not subject to the Act. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records Decision No. 513 (1988); Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552 of the Government Code. Open Records

Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.*

Based on your representation that the information submitted as Exhibit E-1 was created or maintained by the district attorney at the request of the grand jury or pursuant to a grand jury subpoena, we agree that this exhibit is in the possession of the district attorney as agent of the grand jury and is therefore not subject to release under the Act.

We note that the submitted information contains EMS records. Access to the EMS records at issue is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091- .173. *See* Open Records Decision No. 598 (1991). Section 773.091 of the Emergency Medical Services Act provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services....

Confidential EMS records may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." Health & Safety Code § 773.092(e)(4). When a patient is deceased, his personal representative may consent to the release of his records. Health & Safety Code § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of EMS Act). This consent must be written and signed by the patient, authorized representative, or personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Section 773.093(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Therefore, if section 773.092 applies, the district attorney must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, the district must withhold the EMS records under section 552.101 of the Government Code to the extent that they are made confidential

by section 773.091(b) of the Health and Safety Code. See Health & Safety Code § 773.091(g) (stating confidentiality of EMS records “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services”).

We now turn to your argument under section 552.108 of the Government Code for the remaining information, including information not made confidential under section 773.091(g). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that in this case, the grand jury declined to indict the officers involved and that the district attorney has closed its investigation of the matter. Thus, based on your representations and our review, we agree that section 552.108(a)(2) is applicable to the remaining submitted information.

We note, however, that section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, the district attorney may withhold the remainder of Exhibit E from disclosure based on section 552.108(a)(2). We note that the district attorney has the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007. Because our ruling is dispositive, we do not address your remaining arguments.

In summary, we conclude that Exhibit E-1 is not subject to release under the Act. We have marked the EMS records that may only be released in accordance with section 773.092 of the Health and Safety Code. The district attorney may withhold the remainder of Exhibit E, including the information not made confidential under section 773.091(g) of the Health and Safety Code, pursuant to section 552.108 of the Government Code, except for basic information, which must be released pursuant to section 552.108(c). Exhibit D, which consists of the names of grand jurors, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 192577

Enc. Submitted documents

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(w/o enclosures)